REMARKS/ARGUMENT

Claims 1-16 are pending in the application with claim 1 having been amended.

Claims 1-16 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al. (U.S. Publication No. 2005/0234110) in view of Brandes et al. (U.S. Patent No. 5,532,262).

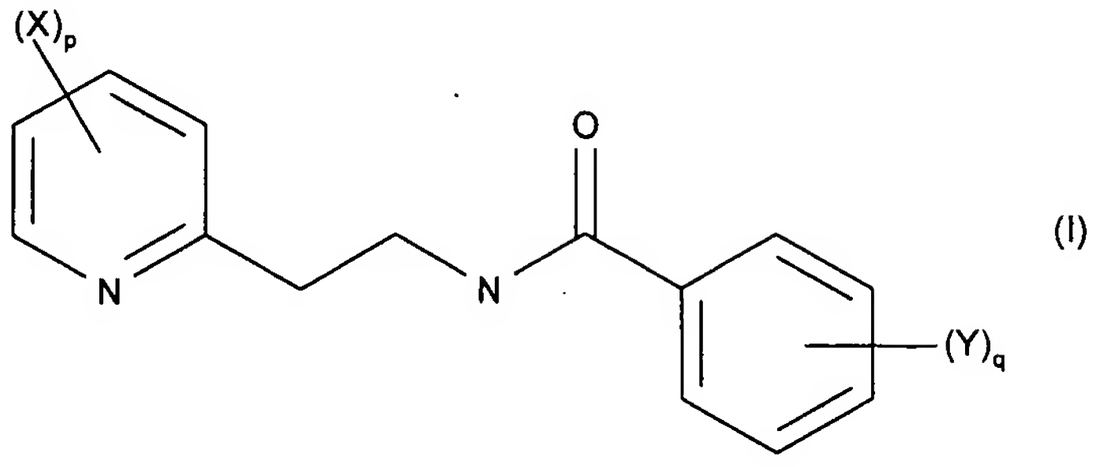
STATEMENT CONCERNING COMMON OWNERSHIP

The undersigned, Applicants' attorney of record, states on information and belief that the present application, U.S. Serial No. 10/588,534, and Mansfield et al. (U.S. Publication No. 2005/0234110) were, at the time the invention of the present application was made, both owned by Bayer CropScience S.A. of 16, Rue Jean-Marie LeClair, F-69009 Lyon, France.

Accordingly, it is submitted that Mansfield et al. (U.S. Publication No. 2005/0234110) is unavailable as a reference against the patentability of the present invention under 35 U.S.C. 103(c).

If, in what is deemed the unlikely event that the USPTO should determine that 35 U.S.C. 103(c) is inapplicable here, the Applicants alternatively offer the following arguments in support of the patentability of the present claims over the cited art.

Mansfield et al. disclose compounds of general formula I,



(I)

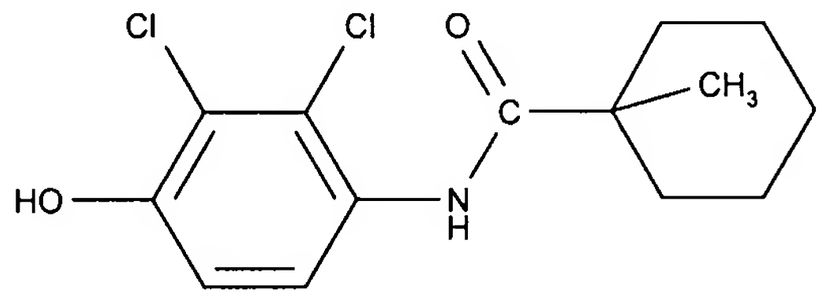
in which p is an integer equal to 1, 2, 3, or 4; q is an integer equal to 1, 2, 3, 4, or 5; each substituent X is chosen, independently of the others, as being halogen, alkyl, or haloalkyl, at least one of the substituents being a haloalkyl; each substituent Y is chosen, independently of the others, as being halogen, alkyl, alkenyl, alkynyl, haloalkyl, alkoxy, amino, phenoxy, alkylthio, dialkylamino, acyl, cyano, ester, hydroxy, aminoalkyl, benzyl, haloalkoxy, halosulphonyl, halothioalkyl, alkoxyalkenyl, alkylsulphonamide, nitro, alkylsulphonyl, phenylsulphonyl, or benzylsulphonyl; as to the N-oxides of 2-pyridine thereof; with the exception of N-{2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]-ethyl}-2,6-dichlorobenzamide.

The Applicants acknowledge that pyridylethylbenzamide derivatives employed in the practice of the present invention are within the scope of this Mansfield et al. disclosure. The Applicants also acknowledge that Mansfield et al. disclose:

> The compounds of the invention can also be mixed with one or more insecticides, fungicides, bactericides, attractant acaricides or pheromones or other compounds with biological activity. The mixtures thus obtained have a broadened spectrum of activity: The mixtures with other fungicides are particularly advantageous.

However, there is no teaching or suggestion in Mansfield et al. of any synergistic effect obtained when such pyridylethylbenzamide derivatives are combined with compounds capable of inhibiting mitosis and cell division, such as carbendazim. Nor is there any disclosure of what the ratios of the two fungicides should be, such as the currently claimed (a)/(b) weight ratio of from 0.01 to 20.

The secondary reference, Brandes et al., fails to supplement these deficiencies, as a reference, of Mansfield et al. Brandes et al. merely disclose that a compound of the formula,



which is nothing at all like the pyridylethylbenzamide derivatives employed in the practice of the present invention, can be combined with known fungicidal active compounds, such as carbendazim and/or diethofencarb and/or iprodione and/or benomyl, among others.

It is understood to be the Examiner's position that the pyridylethylbenzamide derivative (a) of the present invention (e.g., N-{2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl}-2-trifluoromethylbenzamide) is a known fungicide. The compound capable of inhibiting mitosis and cell division (b) of the present invention (e.g., carbendazim) is also known. Thus, it would be obvious to use them in combination, even though no specific mixture is disclosed in the references. The Applicants acknowledge that these compounds, individually, are known are known in the art. However, it is

the Applicants' position that they have discovered a combination that clearly exhibits synergism. They have demonstrated this synergism for this combination in Example 1of the present application, using means for determining synergism that is accepted in the art, i.e., the Colby formula, which was published in the journal 15 WEEDS 20-22 (1967). The Examiner's attention is directed to U.S. Patent No. 6,753,339 in which the Colby method of determining synergism was also employed to the satisfaction of the Patent Office. Based on the teachings of the two cited references, a skilled artisan may indeed have expected a fungicide activity of mixtures of, for example,

N-{2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl}-2-trifluoromethylbenzamide) and, for example, carbendazim. But a skilled artisan would not have expected any synergy when associating these compounds, as evidenced by the example of the present application.

Accordingly, it is requested that the rejection of claims 1-16 under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al. in view of Brandes et al. be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance and an early Office Action to that end is earnestly requested.

Respectfully submitted,

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